FILED
APR 16 1956
HAROLD B. WILLEY, Cl

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 869

GERTRUDE P. MONTGOMERY,

Appellant,

vs.

WEST BASIN MUNICIPAL WATER DISTRICT and THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA,

Appellees.

On Appeal from the Supreme Court of the State of California.

JURISDICTIONAL STATEMENT.

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IN THE

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GERTRUDE P. MONTGOMERY,

Appellant,

vs.

WEST BASIN MUNICIPAL WATER DISTRICT and THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA,

Appellees.

On Appeal from the Supreme Court of the State of California.

JURISDICTIONAL STATEMENT.

Appellant has given notice of appeal from a judgment of the Supreme Court of California, entered November 16, 1955, denying appellant's petition for hearing after the District Court of Appeal of the State had dismissed appellant's appeal from a judgment of the State Superior Court, entered January 12, 1955, dismissing appellant's petition for writ of mandamus (or mandate, according to local usage) directed to appellees. Appellant respectfully requests that her notice of appeal be construed to embrace the underlying judgment of the Superior Court, the court of first instance, which judgment was referred to, although perhaps inexactly, in the notice of appeal. Appel-

lant submits this Jurisdictional Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

The Lower Courts' Decisions Without Opinion.

No opinion was delivered by any of the three State courts which acted on this matter, viz.: the Superior Court, the District Court of Appeal, or the Supreme Court. The minute order of the District Court of Appeal September 22, 1955, dismissing the appeal is reported at 135 A. C. A., No. 6, page 6 of Minutes. The minute order of the Supreme Court November 16, 1955, denying the petition for hearing is reported at 45 A. C., No. 18, page 1 of Minutes.

Jurisdiction.

Appellant's petition to the Superior Court for writ of mandate, brought under Section 1084, *et seq.*, California Code of Civil Procedure, challenged the validity of annexation proceedings whereby appellee water districts imposed a special tax on appellant's real property to pay for improvements constructed solely for the benefit of others and of no possible benefit to appellant. In the State courts, appellant asserted the invalidity, under the Fourteenth Amendment, of certain State statutes (including water district ordinances and resolutions) hereinafter specified, as applied and enforced by State authorities in the factual situation disclosed by appellant's petition for writ of mandate. The decision of the State courts was in favor of the validity of the statutes as so applied and enforced.

The Superior Court sustained appellees' demurrer to the petition for writ of mandate without leave to amend

and gave judgment of dismissal which was dated and entered January 12, 1955.

Appellant's appeal to the State Supreme Court was by that court transferred to the District Court of Appeal for hearing. The District Court of Appeal dismissed the appeal by order dated and entered September 22, 1955. The State Supreme Court denied appellant's petition for hearing by order dated and entered November 16, 1955.

The judgment and orders referred to are set forth in Appendix B hereto.

Notice of appeal to the Supreme Court of the United States was filed February 14, 1956, with the Clerk of the District Court of Appeal, the court possessed of the record.

The jurisdiction of this court to review the State court decision by appeal is conferred by Title 28, United States Code, Section 1257(2). The jurisdiction of this court to review the State court decision by appeal is sustained by a number of decisions, including *Myles Salt Co. v. Iberia Drainage District,* 239 U. S. 478, and *Chesebro v. Los Angeles County Flood Control District,* 306 U. S. 459.

The Questions Presented.

1. Whether the California Municipal Water District Act, the Metropolitan Water District Act, and ordinances and resolutions adopted under color of authority thereof may, consistently with the Fourteenth Amendment, be applied and enforced so as to impose a special tax on appellant's property

(a) Where the special tax is imposed on appellant's property by appellee water districts for the purpose and

with the effect of requiring appellant to pay for improvements constructed solely for the benefit of other property and of no possible benefit to appellant's property,

(b) Where the imposition of such special tax is accomplished by annexing appellant's property to the territory of appellee water districts and is made one of the terms of such annexation,

(c) Where appellee water districts carried out such annexation (including the imposition of the special tax) under color of State law

(1) By creating a gerrymandered election district comprised of widely separated non-contiguous areas and joining more populous areas which will be specially benefited to less populous areas which cannot possibly be benefited, and

(2) By interfering with the annexation election by formally and in advance promising special benefits gratis to the most populous area of the election district while undertaking not to provide such benefits to any other area, and

(d) Where appellant timely challenged such annexation (including the imposition of the special tax) under the Fourteenth Amendment as being palpably arbitrary and a plain abuse of power.

2. Whether, consistently with the Fourteenth Amendment, a State may, through legislative and judicial action

(a) Refuse to stay a water district annexation proceeding, including the imposition of a special property tax, the validity of which is timely challenged by a taxpayer

under the Fourteenth Amendment as being palpably arbitrary and a plain abuse of power,

(b) After formal completion of the annexation, including the imposition of the special tax, dismiss on the ground of alleged mootness the only State judicial proceeding by which the taxpayer could challenge the validity of the annexation and the special tax, and

(c) Refuse to provide a taxpayer any remedy for the imposition of a special tax claimed to be invalid, save by means of a proceeding *in quo warranto* at the sole discretion and under the plenary control of an officer of the State, viz.: the Attorney General.

The Statutes Involved.

The pertinent portions of the California statutes (including water district resolutions) involved are set forth in Appendix A hereto. They are:

California Municipal Water District Act, Sections, 12, 24, and 27 (1 Deering's Water Code Annotated: Uncodified Acts, pp. 422-424, 434-435, and 436-438; Act 5243, Sections 12, 24, and 27.)

California Metropolitan Water District Act, Section 9 (1 Deering's Water Code Annotated: Uncodified Acts, pp. 1144-1150; Act 9129, Section 9).

Metropolitan Water District, Resolution No. 4523.

West Basin Municipal Water District, Ordinance No. 8 and Resolutions Nos. 262 and 264.

California Code of Civil Procedure, Section 803.

Statement.

The following statement is based on appellant's petition for writ of mandate below, the allegations of which were admitted by the demurrer which was sustained without leave to amend, together with admissions contained in appellees' answer to the petition and material of which this court may take notice.

Appellant is the owner of taxable real property in the West Hollywood area of Los Angeles County, California.

Metropolitan Water District of Southern California and West Basin Municipal Water District, hereinafter called "Metropolitan" and "West Basin," appellees, are water districts organized under general California statutes for the formation of such districts. (Acts 5243 and 9129, 1 Deering's Water Code Annotated, Uncodified Acts, p. 406, *et seq.* and p. 1108, *et seq.*) Metropolitan is a constituent body, the membership of which consists of cities and water districts. West Basin is one of the constituent units of Metropolitan.

As a "municipal water district" West Basin is authorized by statute to acquire and operate a water system and associated facilities for the benefit of the district, to levy taxes on all property in the district for district purposes, and to levy special taxes against all or part of the property in the district to pay bond indebtedness according to a declaration of benefit made by the board of directors of the district. (Secs. 12 and 24, Act 5243, 1 Deering's Water Code Annotated, Uncodified Acts, pp. 422-424 and 434-435.)

Annexation of territory to West Basin as a constituent unit of Metropolitan requires the consent of the latter, which may impose terms, including provision for the levy

of special taxes within the annexed area. Metropolitan's control of major water supplies gives it practical control over such annexations, which are largely engineered by Metropolitan although in form an annexation is initiated by a voters' petition to one of Metropolitan's constituent units.[1]

Under State law, annexation to a municipal water district requires a majority vote at an election within the territory proposed to be annexed. Territory proposed for annexation as a single unit may consist of any number of parcels which need not be contiguous to each other or to the annexing district.

The proceedings which appellant challenged in the State courts involved the annexation to West Basin (and hence to Metropolitan) in a single unit, of nine non-contiguous and widely separated parcels, including the West Hollywood area in which appellant owns real property. The West Hollywood area was an "island" of territory which was not then included in the Metropolitan system and which is surrounded by the cities of Los Angeles and Beverly Hills, constituent units of Metropolitan.

Metropolitan has pursued an expansionist policy, ever seeking more territory to tax. In the execution of that policy Metropolitan has arbitrarily pronounced against the continued existence of "islands" of territory not taxed by it and has manipulated annexation proceedings so as to engulf such "islands" and incorporate them into the Metropolitan system merely for tax purposes, wholly with-

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[1]"The planning, timing, and execution of these [annexation] proceedings require close supervision by the legal department" [of Metropolitan]. Metropolitan, Seventeenth Annual Report for the Fiscal Year July 1, 1954, to June 30, 1955 (Los Angeles, 1955), p. 108.

out regard to any benefit to the territory in such "islands." The West Hollywood "island" was annexed through the device of joining it in a gerrymandered election district with a more populous area which was formally promised special benefits which induced it to outvote the West Hollywood area.

The nine non-contiguous parcels proposed for annexation as a single unit were collectively designated the "Culver City-County Territory Areas" in official proceedings of Metropolitan and West Basin. The most populous of the nine parcels was the City of Culver City, with 18,000 registered voters. The West Hollywood area had 14,000 registered voters.

Before the election Metropolitan formally resolved, as one of the conditions of the proposed annexation, that Metropolitan would at its own expense and without cost to Culver City property owners, construct a pipeline from the Palos Verde Feeder line to Culver City, but would not provide any pipeline to serve any of the other eight parcels of the "Culver City-County Territory Area" without specially assessing the cost thereof to the parcel benefited thereby. That resolution was publicized before the election.

As was quite understandable in the circumstances, Culver City favored the annexation. (The City Attorney of Culver City appeared in the State court of first instance in aid of appellees and in support of the annexation.)

By contrast, the West Hollywood area already had a perpetual water supply sufficient for all present and future requirements without resort to any facility of Metropolitan or West Basin, were such resort feasible or possible, which it is not. Property in the West Hollywood area could not be benefited by annexation or derive any benefit

from the taxes imposed on it as part of the annexation plan.

By the terms of the proposed annexation, property within the "Culver City-County Territory Area" would be subjected to a special tax for the next 30 years to retire a bond issue of $23 million to pay for the construction of facilities which would specially benefit areas other than West Hollywood and would not benefit West Hollywood at all. The special tax would constitute a lien upon real property and lessen the market value of West Hollywood real property.

By Resolution No. 262, adopted November 1, 1954, West Basin applied to Metropolitan for consent to annex the "Culver City-County Territory Areas." By Resolution No. 4523, adopted November 9, 1954, Metropolitan consented to such annexation upon certain terms and conditions prescribed by Metropolitan. By Ordinance No. 8, adopted November 10, 1954, West Basin granted a petition for annexation presented by certain proponents and fixed the terms and conditions of such annexation, incorporating therein the terms and conditions prescribed by Metropolitan in its Resolution No. 4523. Also, on November 10, 1954, West Basin, by Resolution No. 264 ordered an election to be held December 14, 1954, in the "Culver City-County Territory Areas" on the question of annexation on the terms and conditions prescribed by Metropolitan.

On December 13, 1954, anticipating an over-all majority vote favoring annexation, appellant filed in the California Superior Court her petition for writ of mandate to prevent appellees from certifying the election result to the Secretary of State or County Recorder and from taking any other action (except counting the votes) to perfect the

attempted annexation. An alternative writ issued, returnable January 7, 1955.

At the election December 14, 1954, the proposition for annexation carried by 10,787 votes to 2,458, although the voters in the West Hollywood area disapproved the annexation by a vote of more than 5 to 1.

On return to the writ of mandate appellees both demurred and answered. Their demurrer was sustained without leave to amend January 10, 1955, and judgment for appellees was ordered. Judgment of dismissal was accordingly signed and entered January 12, 1955. In the interim between the minute order of January 10 and the judgment of January 12, appellees acted swiftly to perfect the annexation. On January 10 officers of West Basin made a certificate declaring the successful completion of the annexation proceeding. On the following day, January 11, the certificate was filed with the Secretary of State, and that officer in turn certified to the annexation. The annexation then became effective under State law.

Thus, the annexation was complete, so far as State authorities could make it so, on January 11, 1955, the day before the judgment of dismissal of appellant's mandate proceeding was signed and entered. Appellants have since asserted that the controversy which originally existed became moot because of the completion of formal annexation proceedings *pendente lite* by appellees and other State officers collaborating with them.

Appellant appealed from the judgment of dismissal to the Supreme Court of California. In the exercise of its discretionary powers that court transferred the appeal to the District Court of Appeal of the State (an intermediate appellate court) for hearing.

Appellees moved the District Court of Appeal to dismiss the appeal on the grounds (1) that the controversy had

become moot with the completion of the annexation proceeding, and (2) that the regularity of the annexation could be challenged only by a proceeding *in quo warranto* brought by the Attorney General of the State. The motion to dismiss the appeal was granted by the District Court of Appeal without opinion. The Supreme Court of the State denied appellant's petition for hearing.

How the Federal Question Is Presented.

The first of the Questions Presented on the appeal to this Court, viz.: the validity of the annexation proceeding as against the United States Constitution, Fourteenth Amendment, was explicitly raised in appellant's initial pleading (Petition for Writ of Mandate) in the State court of first instance (the Superior Court). [Clk. Tr. in the S. Ct. of Calif., p. 7.] Specific reference was there made to the unconstitutionality of the Municipal Water District Act if construed and applied so as to permit annexation of the West Hollywood area in the circumstances here existing. [*Ibid.*, pp. 7-8.] It also appears from appellant's initial pleading that West Basin Resolution No. 264 and Metropolitan Resolution No. 4523 [erroneously numbered 5423—see p. 5, *ibid.*], were measures adopted in execution of the annexation under color of authority conferred by the Municipal Water District Act, elsewhere alleged to be repugnant to the Fourteenth Amendment [pp. 2, 3, 5, 6, 7, 8, *ibid.*]. West Basin Ordinance No. 8 and Resolution No. 262 are disclosed in appellees' answer as additional annexation measures taken under color of authority conferred by the Municipal Water District Act [pp. 21, 25, *ibid.*].

The second of the Questions Presented relates to the adequacy of the grounds upon which the State appellate

courts were urged by appellees to dismiss the appeal for alleged mootness or for failure to resort to *quo warranto* procedure.

Although the second question appears not to have been explicitly raised below in the form in which we have stated it here, it is logically involved in a consideration of the first question. That is to say, if, as appellant contends, the annexation under color of State statutory authority deprived her of property without due process of law, then the State was bound to afford her a remedy. Its failure to do so, if based on inadequate procedural grounds, would partake of the vice to which the annexation itself was subject.

As stated above, none of the three State courts concerned with the cause announced any opinion. The Superior Court by minute order sustained appellees' "demurrer" (actually, the third defense of their answer to the petition for writ of mandate) and then ordered judgment for appellees. That decision necessarily sustained the validity of the State statutes which appellant contended were repugnant to the Fourteenth Amendment.

The dismissal of the appeal by the District Court of Appeal and the denial by the State Supreme Court of appellant's petition for hearing are equivocal, but they are bound to mean one or the other (and perhaps both) of the following things: (1) that the State statutes under attack were sustained as against the Federal due process objection; and (2) that in any event, the State declined to furnish appellant a remedy for claimed deprivation of property without due process of law. Realistically viewed, both propositions amount to the same thing, for deprivation of a remedy was equivalent to denial of the right claimed.

The Questions Are Substantial.

1. As it was presented to and decided by the State court of first instance the case stood thus: State agencies were alleged to have acted fraudulently, arbitrarily, and capriciously (but under color of statutory authority) to include appellant's and other West Hollywood lands within the territory of Metropolitan and West Basin and thereby to subject them to a special tax to pay a bond issue for the construction of a water system solely for the benefit of others and of no possible benefit to appellant or other West Hollywood landowners. Apt reference to the Fourteenth Amendment was timely made. By sustaining appellees' demurrer without leave to amend and giving judgment for appellees the State court necessarily held as matter of law that appellant's claim of right under the Fourteenth Amendment was so devoid of merit as not to require the taking of evidence. As we shall show, the decision of the State court of first instance was erroneous. The error was not corrected by the State appellate courts, one of which dismissed the appeal and the other of which denied a hearing. The questions presented are substantial.

2. The case made by appellant's petition for writ of mandate clearly showed a taking of appellant's property without due process of law under the language of *Myles Salt Co. v. Iberia Drainage District*, 239 U. S. 478, and within the principle of that decision as expounded in other cases decided by this Court.

In the *Myles Salt Co.* case it appeared that the police juries of two Louisiana parishes had drawn the boundaries of a drainage district so as to include an island which could not possibly benefit by the projected drainage system. The inclusion of the island property subjected

it to an ad valorem tax, uniform in the district, to pay a bond issue for the construction of the drainage works. The State court had decided against an owner of island property who sought relief from a tax sale. This Court reversed, stating:

> "It is to be remembered that a drainage district has the special purpose of the improvement of particular property, and when it is so formed to include property which is not and cannot be benefited directly or indirectly, including it only that it may pay for the benefit to other property, there is an abuse of power and an act of confiscation."

The applicability of the *Myles Salt Co.* doctrine to other kinds of districts, such as sewer districts and road districts, has been recognized. (*Valley Farms Co. v. Westchester County,* 261 U. S. 155; *Kansas City So. Ry. Co. v. Road Improvement District No. 6,* 256 U. S. 658; *Atchison, T. & S. F. Ry. Co. v. Public Utilities Commission,* 346 U. S. 346, 352.)

Although

> "To justify an assessment of benefits to particular lands it is not essential that the benefits be direct or immediate . . . it is essential that they have a better basis than mere speculation or conjecture." (*Kansas City So. Ry. Co. v. Road Improvement District No. 3,* 266 U. S. 379.)

In the case at bar, even the possibility of indirect "benefit is excluded by the averments" of appellant's initial pleading, as in the *Myles Salt Co.* case.

Having thus properly challenged the inclusion of her property in appellee districts for assessment purposes, appellant should have been permitted to make her proof in the State court. (*Nashville, C. & St. L. Ry. Co. v. Wal-*

ters, 294 U. S. 405; *Georgia Ry. & Electric Co. v. City of Decatur,* 295 U. S. 165.)

3. Appellees argued to the State courts that questions presented by district territorial annexations are merely political, not justiciable, and in any event are matters of only State concern, citing *Hunter v. Pittsburgh,* 207 U. S. 177.

Appellant concedes the general proposition, subject to the important qualifying principle which governs the case at bar. Where district boundary determination is part of a scheme to impose a special tax on included property to pay for improvements, then a Federal question is presented when such boundary determination (including the imposition of a special tax) is challenged as "an abuse of power and an act of confiscation." (*Myles Salt Co. v. Iberia Drainage District,* 239 U. S. 478.)

4. It was also argued to the State courts on behalf of appellees that Metropolitan and West Basin are public quasi-municipal corporations empowered to levy taxes for municipal purposes, not merely for particular improvements, and that the tax levied on appellant's and other West Hollywood lands did not purport, and was not required, to be justified by reference to benefits.

Appellant concedes that where a tax is general and ad valorem its validity does not depend on the receipt of *special* benefits by the taxpayer. (*St. Louis & S. W. Ry. Co. v. Nattin,* 277 U. S. 157; *Memphis & C. Ry. Co. v. Pace,* 282 U. S. 241.) But the foregoing rule is subject to the exception that an ad valorem tax will be invalid when its "exaction is a flagrant abuse, and by reason of its arbitrary character is mere confiscation of particular property" (*Houck v. Little River Drainage*

District, 239 U. S. 254), as where there is not even the possibility of indirect benefit. (*Myles Salt Co. v. Iberia Drainage District,* 239 U. S. 478.)

In any event, the factual basis upon which appellees would found their argument is lacking. Although ad valorem, the water district bond tax involved is not general, but special, and it purports to be related to benefit. It is explicitly provided in the Municipal Water District Act, Section 24, that:

> "Taxes for the payment of bonded debt and the interest thereon shall be a lien on all the property benefited thereby as stated in the resolution of the board of directors declaring the necessity to incur the debt."

Accordingly, it is inadmissible for appellees to contend that the question of benefit is irrelevant to the imposition of special taxes for the payment of $23 million bond indebtedness as alleged in appellant's petition for writ of mandate.

5. As stated above, dismissal of the appeal was urged upon the State appellate courts upon the grounds (1) that the proceeding was moot, and (2) that the validity of the annexation could be inquired into only in a *quo warranto* proceeding brought by the State Attorney General.

The asserted mootness of the proceeding was founded on the Secretary of State's certification whereby the annexation was said to have achieved *de facto* effectiveness under State law. But the certification was itself State action, intended to perfect an annexation which appellant had challenged as beyond the State's power. It would be absurd to suppose that when State action is challenged *in limine* as being repugnant to the Federal Constitution,

the State can withdraw such action from judicial scrutiny merely by proceeding in defiance of the objections asserted in pending litigation. Yet that is precisely the effect of appellees' contention as to alleged mootness.

In support of their motion to dismiss for mootness appellees cited *Mills v. Green,* 159 U. S. 651. But in that case the Court said:

> ". . . when, pending an appeal from the judgment of a lower court, *and without any fault of the defendant,* an event occurs which renders it impossible for this court, if it should decide the case in favor of the plaintiff, to grant him any effective relief whatever, the court will not proceed to a formal judgment, but will dismiss the appeal." (653.) (Emphasis supplied.)

The decision obviously does not support appellees' contention that action taken by them to perfect the annexation rendered the litigation moot.

Nor can a claim of mootness properly be founded on the technical point that the petition for writ of mandate sought to prevent certification of the annexation and that after the certification had taken place there was nothing which the litigation could accomplish. The petition for writ of mandate also prayed general relief, and under State practice the prayer of a pleading does not limit the scope of the relief which may be granted. (2 Witkin, California Procedure, p. 1216.)

6. Appellees contended further that after certification by the Secretary of State made the annexation *de facto* effective it could not be challenged save in a *quo warranto* proceeding.

In California a proceeding *in quo warranto* can be instituted only by the Attorney General, who has discretion

in the matter and who retains control of the proceeding throughout. (Cal. Code of Civ. Proc., Sec. 803; *People v. Reclamation District,* 169 Cal. 786, 147 Pac. 1176; *People v. Petroleum Rectifying Co.,* 21 Cal. App. 2d 289, 68 P. 2d 984.)

On principle, it would seem that one who claims the protection of the Federal Constitution against State action cannot be restricted to a remedy which can be had only in the discretion of an officer of the State whose action is challenged. To confide the rights of a private suitor to the discretion of a State officer in such a case would make the State judge of its own cause, and would obviously be a denial of due process. *Cf. Tumey v. Ohio,* 273 U. S. 510. See also, *Columbian Cat Fanciers, Inc. v. Koehne* (C. A., D. C.), 96 F. 2d 529, where it was recognized that even in controversies between private persons *quo warranto* at the discretion of a State officer is not an adequate remedy.

7. We suggest that the questions presented are clearly substantial. They are also of public importance.

Apart from action "palpably arbitrary and a plain abuse of power" (*Valley Farms Co. v. Westchester County,* 261 U. S. 155) State agency boundary determination for tax purposes is and of course should be left for State determination. Challenges to State action in this field on Federal constitution grounds are bound to be few and seldom successful, for lack of supporting facts. But the opportunity to challenge State action and to support the challenge with proof must exist. The principle of *Myles Salt Co. v. Iberia Drainage District,* 239 U. S. 478, and similar cases has a wholesome restraining influence on State authorities—an influence the extent of which cannot be measured by the number of suits filed.

And such a restraining influence is needed now more than ever. With the increasing urbanization of our country and the multiplication of special taxing districts with diverse boundaries, effective popular control over local government functions is sometimes lost. The withdrawal of local government functions from effective popular control is in itself, of course, a political matter which does not concern this Court or the Constitution which it enforces. But where local government functions are insulated from effective popular control the danger of "palpably arbitrary" action and "plain abuse of power" is enhanced.

We have referred above to State action, which of course is what Metropolitan and West Basin action technically is. It should not be forgotten, however, that State power is sometimes employed by private interests to enrich themselves at others' expense. In the case at bar, large landowners in the Malibu area support the annexation of West Hollywood lands to make them help pay for the delivery of water to Malibu and thereby increase the value of their own holdings.[2] The exertion of State power for such a purpose should not be exempt from judicial scrutiny when challenged on Federal constitutional grounds.

Respectfully submitted,

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[2]Affidavit of Merritt H. Adamson, in support of motion in the District Court of Appeal to dismiss the appeal. The affidavit also asserts the existence of water shortage in the Malibu area as a reason why the appeal should be dismissed. The materiality of that assertion to the merits of the cause does not appear. If the Court should be inclined to take notice of it, then appellant respectfully requests the Court to consider the material contained in Appendix C hereto.

APPENDIX A.

The Statutes Involved.

California Municipal Water District Act (1 Deering's Water Code Annotated, Uncodified Acts, Act 5243, p. 406, *et seq.*)

¶12. Any municipal water district . . . shall have power:

* * * * * * * *

5.To acquire, or contract to acquire, water works or a water works system, waters, water rights, lands, rights and privileges and construct, maintain and operate conduits, pipelines, reservoirs, works, machinery and other property useful or necessary to store, convey, supply or otherwise make use of water for a water works plant or system for the benefit of the district, and to complete, extend, add to, repair, or otherwise improve any water works or water works system acquired by it as herein authorized;

* * * * * * * * *

9. To cause taxes to be levied . . . for the purpose of paying any obligation of the district . . .

¶24. The board of directors shall determine the amounts necessary to be raised by taxation during the fiscal year and shall fix the rate or rates of tax to be levied which will raise the amounts of money required by the district, and . . . shall certify to the board of supervisors the rate or rates so fixed and shall furnish to the board of supervisors a statement in writing containing the following: (a) an estimate of the minimum amount of money required to be raised by taxation during the fiscal year for the payment of the principal of and interest on any bonded debt of the district or of an improvement

district thereof as it becomes due; (b) a description of the improvement district benefited by the purposes of the bonded debt as stated in the resolution to incur the bonded indebtedness, or, if the whole district was benefited by incurring it, a statement of such fact; . . . The board of directors shall direct that . . . such board of supervisors shall levy . . . at the rate or rates so fixed and determined by the board of directors, a tax upon the property within the district, or improvement district thereof benefited by the bonded debt, as the case may be, and it is made the duty of the officer or body having authority to levy taxes within each county to levy the tax so required. Taxes for the payment of the interest on or principal of any bonded debt shall be levied on the property within the district, or improvement district thereof benefited by the bonded debt, as determined by the board of directors in the resolution declaring the necessity to incur the debt. Taxes for other purposes of the district shall be levied on all property in the district or portion thereof subject to the particular tax . . . Taxes for the payment of a bonded debt and the interest thereon shall be a lien on all the property benefited thereby as stated in the resolution of the board of directors declaring the necessity to incur the debt. All taxes for other purposes of the district shall be a lien on all the property in the district subject to the respective tax . . .

¶27. Any portion of a county in which a municipal water district is situated . . . may be added to any district . . . and such . . . territory may consist of one or more parcels which need not be contiguous one with the other . . . and such annexing area or areas need not be contiguous with the district. Such annexation shall occur in the following manner. A petition . . . shall be filed with the secretary of the district, signed by

voters residing with the boundaries of the area proposed to be annexed equal in number to at least 10 per centum of the number of such voters voting for all candidates for the Office of Governor of this State at the last general election prior to the filing of such petition . . . Such petition shall set forth and describe the boundaries of the area proposed to be annexed and shall contain a prayer that such area be annexed to such municipal water district . . . Such petition may be granted by ordinance of the board of directors of such district. In granting such petition, such board of directors may fix in said ordinance the terms and conditions upon which such annexation may occur, and such terms and conditions may provide, among other things, for the levy by such municipal water district of special taxes upon taxable property within such annexed area or areas in addition to the taxes elsewhere in this act authorized to be levied by such municipal water district, and in case such terms and conditions shall provide for the levy of such special taxes, the board of directors, in fixing such terms and conditions, shall specify the aggregate amount to be so raised and the number of years prescribed for raising such aggregate sum and that substantially equal annual levies will be made for the purpose of raising such sum over the period so prescribed . . . If such petition is granted, the proposition of such annexation subject to the terms and conditions so fixed, shall be submitted to the voters in the proposed addition . . . The board of directors shall canvass the votes cast at such election and if such proposition is approved by a majority of the voters voting thereon at such election, the president and secretary of the board of directors shall certify that fact to the Secretary of State . . . Upon receipt of such last-mentioned certificate, the Secretary of State shall, within 10 days,

issue his certificate reciting the passage of said ordinance and the addition of said area or areas to said district . . . From and after the date of such certificate, the area or areas named therein shall be deemed added to, and shall form a part of, said municipal water district, and the taxable property therein shall be subject to taxation thereafter for the purposes of said municipal water district, including the payment of bonds and other obligations of such district at the time authorized or outstanding . . .

California Metropolitan Water District Act (1 Deering's Water Code Annotated, Uncodified Acts, Act 9129, p. 1108, *et seq.*):

¶9(a) . . . "municipality" shall mean any municipal water district . . .

(b) Territory may be annexed to any metropolitan water district . . . by one of the following methods:

(4) Upon terms and conditions fixed by the board of directors of such metropolitan water district and in the manner provided in paragraph (d) hereof, by annexation to . . . any municipality, the area of which . . . is included within such metropolitan water district as a separate unit; provided, that unless such territory shall be so annexed to such metropolitan water district with the consent of such board of directors, the annexation of such territory to . . . any such municipality shall not authorize or entitle such municipality or territory to demand or receive any water from such metropolitan water district for use in such territory . . .

(d) The governing body of any municipality, the area of which . . . is included within such metropolitan water district as a separate unit, may apply to the board

of directors of such metropolitan water district for consent to annex to such metropolitan water district territory which it is sought to annex to . . . such municipality . . . The board of directors may grant or deny such application and in granting the same may fix the terms and conditions upon which such territory may be annexed to, and become a part of, the metropolitan water district. Such terms and conditions may provide, among other things, for the levy by such metropolitan water district of special taxes upon taxable property within such territory in addition to the taxes elsewhere in this act authorized to be levied by such metropolitan water district, and in case such terms and conditions shall provide for the levy of such special taxes, the board of directors in fixing such terms and conditions shall specify the aggregate amount to be so raised and the number of years prescribed for raising such aggregate sum, and that substantially equal annual levies will be made for the purpose of raising such sum over the period so prescribed . . .

California Code of Civil Procedure, Section 803:

An action may be brought by the attorney-general, in the name of the people of this state, upon his own information, or upon a complaint of a private party, against any person who usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, or any franchise, or against any corporation, either *de jure or de facto*, which usurps, intrudes into, or unlawfully holds or exercises any franchise, within this state. And the attorney-general must bring the action, whenever he has reason to believe that any such office or franchise has been usurped, intruded into, or unlawfully held or exercised by any person, or when he is directed to do so by the governor.

APPENDIX B.

THE JUDGMENT AND ORDERS BELOW.

1. Judgment of the Superior Court of the State of California, in and for the County of Los Angeles, entered January 12, 1955:

This cause came on regularly to be heard in the Superior Court of the State of California in and for the County of Los Angeles in Department 20 thereof, Honorable Joseph W. Vickers, Judge Presiding, on January 7, 1955, and January 10, 1955.

Plaintiff appeared by her attorney Emmett E. Doherty. Defendant West Basin Municipal Water District appeared by its Attorney Ralph B. Helm and defendant The Metropolitan Water District of Southern California appeared by its Attorneys James M. Howard, General Counsel, Charles C. Cooper, Jr., Assistant General Counsel, and John M. Davenport, Deputy General Counsel. Interveners Marblehead Land Company, a Corporation, Roy E. Crummer, Jr., Malibu Chamber of Commerce, a Corporation, Malibu Township Council, Inc., a Corporation, Malibu Water Company, a Corporation, and Malibu Realty Board, an unincorporated association, appeared by their Attorney Stephen B. Robinson and their Attorney John W. Holmes of Dunlap, Holmes, Ross & Woodson. M. Tellefson, City Attorney of the City of Culver City, California, was granted leave to appear as *amicus curiae* in support of defendants.

Plaintiff's amendment to petition for writ of mandate was presented and, over objection of defendants, was ordered filed. It was stipulated in open court by all parties, by their respective attorneys, that defendants' demurrer to plaintiff's petition for writ of mandate, which

demurrer was pleaded in defendants' third answer to petition for writ of mandate and return to alternative writ of mandate, as follows:

> "That said petition does not state facts sufficient to constitute a cause of action against defendants or either of them."

be deemed pleaded and filed to plaintiff's petition for writ of mandate, as amended.

The cause was heard on defendants' said demurrer to plaintiff's petition for writ of mandate as amended. Argument was heard and the case was continued from Friday, January 7, 1955, to Monday, January 10, 1955, in the same department and further hearing and argument was had. The court, after considering the ultimate facts alleged in plaintiff's petition, as amended, and being fully advised in the premises, on January 10, 1955, duly made and entered its order sustaining the demurrer, without leave to amend, to said petition as amended and presented. The court further ordered that the existing alternative writ of mandate be discharged, that the restraining order contained in said alternative writ be dissolved, that the matter be dismissed and that plaintiff take nothing against defendants by her petition for writ of mandate as amended.

It was stipulated in open court by plaintiff by her attorney and by interveners, Marblehead Land Company, a Corporation, Roy E. Crummer, Jr., Malibu Chamber of Commerce, a Corporation, Malibu Township Council, Inc., a Corporation, Malibu Water Company, a Corporation, and Malibu Realty Board, an unincorporated association, by their attorneys, that the complaint in intervention of said interveners heretofore filed herein by leave of court, shall remain on file, that no answer thereto shall be re-

quired unless this cause be appealed, reversed on appeal, and remanded to the trial court, and that in such event answer to such complaint in intervention may then be filed.

It is therefore, ordered, adjudged and decreed that:

1. Defendants' demurrer to plaintiff's petition for writ of mandate as amended be sustained without leave to amend;

2. The alternative writ of mandate in this cause be discharged;

3. The restraining order contained in the alternative writ of mandate in this cause be dissolved;

4. The issuance of a peremptory writ of mandate be and the same is hereby denied;

5. The petition herein be dismissed;

6. Petitioner take nothing by said petition;

7. Defendants The Metropolitan Water District of Southern California and West Basin Municipal Water District have judgment against plaintiff with costs; in the sum of $6.50 claimed by the Metropolitan Water District of Southern California.

8. The clerk is directed to enter this judgment.

Dated: January 12, 1955.

Joseph W. Vickers

JOSEPH W. VICKERS

Judge Presiding.

2. Minute order of the District Court of Appeal of the State of California, Division Two, entered September 22, 1955:

"Division Two September 22, 1955

* * * * * * * *

Civil No. 21236.

Montgomery vs. West Basin Water District and Marblehead Land Co.

Motions to dismiss presented by C. C. Cooper, Sr., for respondent, opposed by Emmett E. Doherty for appellant. Motions granted, appeal dismissed."

3. Minute order of the Supreme Court of the State of California, entered November 16, 1955:

"San Francisco, Nov. 16, 1955. (2d Civ. 21236, Div. 2.) Montgomery v. West Basin Municipal Water District *et al.* Appellant's petition for hearing denied."

APPENDIX C.

THE ALLEGED WATER SHORTAGE IN THE MALIBU AREA.

The affidavit of Merritt H. Adamson in support of appellees' motion to dismiss the appeal in the State court identifies the affiant as vice-president of the Marblehead Land Company. It does not disclose that he is also an officer of Malibu Water Company, a wholly-owned subsidiary of the land company. The Malibu Water Company is the principal water supplier in the Malibu area. (California Public Utilities Commission, Decision No. 51794, *Matter of Malibu Water Company,* August 9, 1955.)

Adamson's affidavit asserts that the only source of supply of the Malibu Water Company is underground water, which is "critically endangered" and "insufficient for present needs of . . . residents and property owners."

The Public Utilities Commission found on the basis of its staff engineers' testimony that the water company's Rindge Dam reservoir (not then in use for domestic water purposes) could be desilted and repaired economically and thereafter utilized for domestic water purposes. The water company was ordered to report to the Commission every 90 days for the next two years concerning its progress in complying with the Commission's recommendation. (PUC Decision No. 51794.)

It is further stated in the Adamson affidavit that the wells of Deerpath Mutual Water Company are so depleted that it is necessary to haul in water from Santa Monica for its 110 customers, and that "In the past, Malibu Water Company has made up water shortages for the Deerpath Company but now finds its own wells so

depleted that it can no longer help out the Deerpath Company."

The Deerpath area enjoins the service area of the Malibu Water Company, which discontinued service to the Deerpath Company in August 1955, shortly before the date of the Adamson affidavit. On August 19, 1955, the day after the affidavit was made, Malibu Water Company was requested to permit water from the well of Joseph Shalhoub to be transported through the lines of the Malibu Water Company to the Deerpath Company at a transmission rate to be fixed by the Public Utilities Commission. Malibu Water Company refused the request September 2, 1955. (The Santa Monica Outlook, September 23, 1955.)

FILED
MAY 9 1956
HAROLD B. WILLEY, Cl

IN THE

Supreme Court of the United States

October Term, 1955
No. 869

GERTRUDE P. MONTGOMERY,

Appellant,

vs.

WEST BASIN MUNICIPAL WATER DISTRICT, and
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA,

Appellees.

On Appeal From the Supreme Court of the State of California.

MOTION TO DISMISS.

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IN THE

Supreme Court of the United States

October Term, 1955
No. 869

GERTRUDE P. MONTGOMERY,

Appellant,

vs.

WEST BASIN MUNICIPAL WATER DISTRICT, and
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA,

Appellees.

On Appeal From the Supreme Court of the State of California.

MOTION TO DISMISS.

Appellees in the above entitled case, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move to dismiss this appeal on the grounds: (1) that the appeal is not within the jurisdiction of this Court, because not taken in conformity to statute; (2) that it does not present a substantial federal question; (3) that the federal question sought to be reviewed was not expressly passed on by the court from whose judgment this appeal has been noted; and (4) that the judgment rests on an adequate non-federal basis.

Jurisdiction.

The instant appeal is not within the jurisdiction of this Court.

Appellant, on December 13, 1954, filed in the Superior Court her petition for writ of mandate to prevent appellees and their officers from certifying the completion of the proceeding for the concurrent annexation to appellee Districts of extensive, inhabited territory designated as the Culver City-County Territory Areas, if the proposition for such annexation should be approved by a majority of the voters voting thereon at the election to be held in the annexing territory on the following day, December 14, 1954. Appellant contended that the State statutes providing for such annexation were repugnant to the 14th Amendment of the Constitution of the United States. The suit was filed pursuant to the Code of Civil Procedure of the State of California, Sections 1084 and following, providing for the issuance of writs of mandate "to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station". (Section 1085.)

Appellee The Metropolitan Water District of Southern California is a public and *quasi*-municipal corporation formed under a general statute of the State of California (Metropolitan Water District Act, California Stats. 1927, ch. 429, p. 694, as amended) for the purpose of supplying water to the municipalities, the corporate areas of which are included within said appellee District as separate, unit municipalities thereof. Appellee West Basin Municipal Water District is a public and *quasi*-municipal corporation formed under a general statute of the State of

California (Municipal Water District Act of 1911, as amended, California Stats. 1911, ch. 671, p. 1290) for the purpose of supplying water to its inhabitants, and its corporate area is included within appellee The Metropolitan Water District of Southern California as a separate, unit municipality thereof. The annexation proceeding was conducted in strict compliance with the statutory provisions (Sec. 27, Municipal Water District Act of 1911, as amended; Sec. 9, Metropolitan Water District Act). Appellant's attack was grounded solely upon the asserted unconstitutionality of the State statutes authorizing annexation of the territory in question upon majority vote of the voters therein voting on the proposition at the election, notwithstanding her allegations that her property in the West Hollywood area (Parcel 4 of the nine parcels comprising the Culver City-County Territory Areas) would receive no benefits from being included within appellee Districts and that a majority of the voters in Parcel 4 voting on the proposition voted against the annexation.

Appellees' demurrer to appellant's petition, as amended, after full argument and presentation, was sustained by the trial court without leave to amend. The court discharged the alternative writ, denied a peremptory writ, and ordered judgment for appellees on January 10, 1955. Thereupon the officers of appellee West Basin Municipal Water District, in performance of their statutory duties, promptly certified the election results, and the Secretary of State of the State of California issued his certificate evidencing the completion of the annexation on January 11, 1955. Judgment in conformity with the trial court's rulings was entered January 12, 1955.

The appeal noted on March 11, 1955, to the State Supreme Court was transferred to the District Court of Appeal for the Second Appellate District. Division

Two of that court on September 22, 1955, granted appellees' motion to dismiss the appeal on the grounds that it was moot because the specific act sought to be prevented by the writ of mandate had been performed and because the validity of the completed annexation could be attacked only by proceedings in *quo warranto.* Appellant's petition for hearing by the California Supreme Court after decision of the District Court of Appeal was denied November 16, 1955. The notice of appeal to this Court from the order of the State Supreme Court was filed in the District Court of Appeal on February 14, 1956.

Appellant asserts that this Court has jurisdiction under Title 28, United States Code, Section 1257(2). This federal statute does not authorize the review sought by appellant.

Neither the order of the California Supreme Court refusing a hearing after decision by the District Court of Appeal, nor the order of said District Court of Appeal dismissing appellant's appeal from the Superior Court's judgment, constituted a decision in favor of the validity of any California statute challenged by appellant as being repugnant to the Federal Constitution. The Superior Court's judgment was *not* a "final judgment or decree rendered by the highest court of a State in which a decision could be had," and appellant has recognized this. She has appealed to this Court from the order of the California Supreme Court denying hearing after decision by the California District Court of Appeal.

The California appellate courts predicated their orders upon the following grounds, to which their attention was directed by appellees, none of which grounds presents a

substantial, or any, federal question which would authorize this Court to entertain the appeal upon its merits:

(1) Upon certification of the election results and completion of the annexation following dismissal by the Superior Court of appellant's suit, the relief sought by her no longer could be granted under State practice in her action, so that her appeal had become moot. (*Richardson v. McChesney* (Oct. Term, 1910), 218 U. S. 487, 54 L. ed. 1121; *Jones v. Montague* (Oct. Term, 1903), 194 U. S. 147, 48 L. ed. 913; *Selden v. Montague* (Oct. Term, 1903), 194 U. S. 153, 48 L. ed. 915; *Mills v. Green* (Oct. Term, 1895), 159 U. S. 651, 40 L. ed. 293; *Nevada-California-Oregon Railway v. Burrus* (Oct. Term, 1916), 244 U. S. 103, 61 L. ed. 1019; *Ohio ex rel. Bryant v. Akron Metropolitan Park District* (Oct. Term, 1929), 281 U. S. 74, 74 L. ed. 710.)

(2) Upon certification by the California Secretary of State of the completion of the annexation, an action in *quo warranto* was the only proceeding available under State practice by which attack could be made upon the validity of the annexation and by which appellees could be ousted from their jurisdiction within the annexed territory. (*Iowa Central R. Co. v. State of Iowa* (Oct. Term, 1895), 160 U. S. 389, 40 L. ed. 467; *Crane v. Hahlo* (Oct. Term, 1921), 258 U. S. 142, 66 L. ed. 514; *Dohany v. Rogers* (Oct. Term, 1929), 281 U. S. 362, 74 L. ed. 904; *Selser v. City of Stuart* (5th C. C. A., 1943), 135 Fed. 2d 211, *certiorari* denied, 320 U. S. 769, 88 L. ed. 460; *Morin v. City of Stuart* (5th C. C. A., 1940), 111 Fed. 2d 773, quoted with approval in *Selser v. City of Stuart, supra.*)

Question Presented.

Whether the orders of the California appellate courts, holding that under the State practice no effective relief could be granted to appellant in the proceeding filed by her and that adjudication of the asserted invalidity of the annexation attacked by appellant with resulting ouster of appellees from their jurisdiction in the annexed territory could be made in conformity with State practice only in an action in *quo warranto,* are reviewable by this Court by appeal under Title 28, United States Code, Section 1257(2).

Statutes Involved.

The provisions of the California statutes under which the Culver City-County Territory Areas have been annexed to appellee Districts, which provisions appellant asserted were repugnant to the 14th Amendment of the Federal Constitution, are:

(1) Section 27, Municipal Water District Act of 1911, as amended, Statutes 1911, chapter 671, page 1290. This section, with omissions not material to consideration of appellees' motion to dismiss, is printed on pages 2-4 of Appendix "A" of appellant's jurisdictional statement.

(2) Section 9, Metropolitan Water District Act, Statutes 1927, chapter 429, page 694, as amended. This section, with omissions not material to the consideration of this motion to dismiss the appeal, is set forth at pages 4-5 of Appendix "A" of appellant's jurisdictional statement.

Sections 12 and 24 of the Municipal Water District Act of 1911, as amended, portions of which are set forth on pages 1-2 of Appendix "A" of appellant's jurisdictional statement, are not pertinent to consideration of this motion

to dismiss. The cited sections relate to the powers of a municipal water district to furnish its inhabitants with water and to levy taxes necessary for carrying out its functions and for servicing bond issues authorized by its voters. Throughout appellant's jurisdictional statement she erroneously contends that her property will be subjected to special taxes by appellees to provide improvements which will confer no benefit upon her. The "special taxes" required by the terms of annexation to be levied by appellees will be general taxes levied upon all taxable property within the Culver City-County Territory Areas for the purpose of providing funds to carry on the general functions of appellee Districts as public and *quasi*-municipal corporations of the State of California. These taxes in no sense are special assessments imposed upon property receiving special benefits. No "bond" taxes are levied under Section 24 by appellee West Basin Municipal Water District, as no bond issues have been authorized by its voters. Appellant does not assert that Sections 12 and 24 are repugnant to the Federal Constitution. She refers to these sections in arguing that the above-cited statutory provisions authorizing annexation of the Culver City-County Territory Areas in manner subjecting her property to the jurisdiction of appellee Districts notwithstanding her assertion that she will derive no benefit, render the annexation provisions unconstitutional.

Appellant's suit for writ of mandate was filed pursuant to the provisions of the Code of Civil Procedure of the State of California, Sections 1084 and following, which provide for the issuance of writs of mandate "to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust or station". (Section 1085.)

The provisions relating to actions in *quo warranto* are contained in Section 803 of the California Code of Civil Procedure. This section is set forth at page 5 of Appendix "A" of appellant's jurisdictional statement.

Statement of the Case.

Appellees make this statement of the case because they cannot accept appellant's statement as being accurate and complete.

Appellee The Metropolitan Water District of Southern California, herein referred to as "Metropolitan", is a public and *quasi*-municipal corporation formed under a general statute of the State (Metropolitan Water District Act, Stats. 1927, ch. 429, p. 694, as amended) for the purpose of supplying water to the municipalities, the corporate areas of which are included within Metropolitan as separate, unit municipalities thereof. Appellee West Basin Municipal Water District, herein referred to as "West Basin", is a public and *quasi*-municipal corporation formed under a general statute of the State (Municipal Water District Act of 1911, as amended, Stats. 1911, ch. 671, p. 1290) for the purpose of supplying water to its inhabitants, and its corporate area is included within Metropolitan as a separate, unit municipality thereof.

Annexation to appellee West Basin of inhabited territory may be initiated by petition of voters residing therein. Such territory may consist of numerous parcels which need not be contiguous to each other or to West Basin. After hearing, the petition may be granted by ordinance of West Basin's Board of Directors, upon such terms and conditions as the Board may fix. If a majority of the voters of the territory voting on the proposition at an election held therein shall approve the annexation on the terms so fixed,

the fact of such approval must be certified by West Basin's officers to the County Recorder and to the Secretary of State, who then must issue his certificate evidencing the completion of the annexation. (Sec. 27, Municipal Water District Act of 1911, as amended; Appellant's Juris. State., App. A, pp. 2-4.) Such territory will be annexed concurrently to appellee Metropolitan if the consent of Metropolitan's Board of Directors, on such terms and conditions as the Board may fix, be first obtained and the substance of such terms and conditions be set forth in the notice of the election to be held in the annexing territory. (Sec. 9(d), Metropolitan Water District Act, Appellant's Juris. State., App. A, pp. 4-5.)

Petition for concurrent annexation to appellee Districts of extensive, inhabited territory (consisting of nine parcels, each contiguous to Metropolitan but not contiguous to West Basin or to the other parcels) designated as the "Culver City-County Territory Areas", was filed on October 18, 1954, with the Secretary of appellee West Basin. [Clk. Tr. p. 2, lines 16-20.] The corporate boundaries of appellee Districts and the boundaries of the Culver City-County Territory Areas are shown on the maps, Exhibits "A" and "B" to appellees' answer filed in the trial court; the parties stipulated that these maps are accurate, to scale, and correctly show the boundaries of the areas depicted; and it was so stipulated for the purposes of the ruling by the Court on appellees' demurrer. [Clk. Tr. p. 50, lines 1-7.] These maps have been designated as parts of the record on this appeal.

Consent to such annexation was granted by Metropolitan's Board of Directors upon terms and conditions requiring the imposition of annexation charges aggregating $23,092,800 to be raised over a period of thirty years by

means of substantially equal annual tax levies by Metropolitan upon all taxable property within the annexing territory, commencing with the fiscal year 1955-56. The petition for annexation was granted by ordinance of West Basin's Board of Directors upon terms and conditions requiring the imposition of annexation charges aggregating $101,514.22 to be raised by a tax levy by West Basin for the fiscal year 1955-1956 upon all taxable property within such annexing territory. West Basin's Board thereupon called the annexation election, to be held in the Culver City-County Territory Areas on December 14, 1954. [Resolution No. 264 of West Basin's Board of Directors, Ex. "2" of Appellant's Pet. for Writ of Mandate, Clk. Tr. p. 3, lines 13-14; Ex. "J" to Appellees' Answer in the trial court, which has been designated as part of the record on this appeal, contains the text of said Resolution No. 264.]

The annexation on the terms and conditions so fixed by appellee Districts was approved by a majority of the voters in the annexing territory voting on the proposition at said election, the vote thereon being 10,817 votes in favor of said proposition and 2,467 votes against, out of a total of 13,284 votes cast. (Affidavit of Secretary of West Basin in support of appellees' Motion to Dismiss Appeal in District Court of Appeal, printed as Appendix "B" of appellees' Answer to Pet. for Hear. in State Supreme Court, p. 2.) The majority of the voters in Parcel 4 (West Hollywood area) voting thereon voted against said annexation proposition. [Clk. Tr. p. 39, lines 10-15.]

Contrary to appellant's assertion (Juris. State. pp. 9, 16), property within the annexed territory will *not* be subjected "to the imposition of special taxes for the payment of $23 million bond indebtedness" (p. 16). The "special taxes" to be levied pursuant to the annexation terms will be levied upon all taxable property within the Culver City-County Territory Areas to provide funds for carrying on the general functions of appellee Districts as public and *quasi*-municipal corporations of the State of California. Such taxes will *not* be imposed as special assessments upon property receiving special benefits. (Sec. 9(d), Metropolitan Water District Act; Sec. 27, Municipal Water District Act of 1911, as amended; Appellant's Juris. State., App. A, pp. 4-5, 2-4.)

On December 13, 1954, appellant, as the owner of real property in the West Hollywood area (Parcel 4), filed in the Superior Court of the State of California, in and for the County of Los Angeles, a petition for writ of mandate to require appellees to desist from all election proceedings other than the canvassing of the votes, and to enjoin appellees and their officers from certifying the results of the annexation election to the Secretary of State and to the County Recorder. [Clk. Tr. pp. 1-8.] An Alternative Writ of Mandamus thereupon was issued by said court, returnable January 7, 1955, commanding appellees to cease all annexation proceedings then pending except the canvassing of the votes cast at the election to be held December 14, 1954, and enjoining appellees and their officers from certifying the election results to the Secre-

tary of State and to the County Recorder of Los Angeles County. [Clk. Tr. pp. 12-13.]

Appellees filed an answer to the petition and return to the alternative writ [Clk. Tr. p. 14], containing a general demurrer. [Clk. Tr. p. 32, lines 24-29.] On the return day (January 7, 1955), appellant filed an amendment to her petition in which she alleged that a great majority of the voters in the West Hollywood area (Parcel 4) voting on the proposition at the election held December 14, 1954, voted against the annexation and that it would be unconstitutional to compel the annexation of Parcel 4 "against the will of the property owners residing therein" [Clk. Tr. p. 39, lines 10-19]; she made further allegations regarding the asserted adequacy of the water supplies for the West Hollywood area and the asserted absence of benefits to property therein, including that owned by her, from the annexation to appellee Districts. [Clk. Tr. pp. 38-40.] Appellees' demurrer to appellant's petition as amended, after full presentation and argument on January 7 and 10, 1955, was sustained by the trial court without leave to amend; on the last-mentioned date the court discharged the alternative writ, denied a peremptory writ, and ordered judgment for appellees. [Clk. Tr. pp. 37, 42.] Judgment in conformity with the trial court's rulings was entered January 12, 1955. [Clk. Tr. pp. 43-45.]

Appellant conceded in the trial court that appellee Districts had complied strictly with the applicable statutory provisions and "raised no objection to the regularity of the annexation proceedings as required by law." (Pet. for

Hear. in California Supreme Court, p. 2, lines 18-19.) Appellant's attack was grounded solely upon the asserted repugnancy to the Fourteenth Amendment of the Constitution of the United States, of the State statutes authorizing annexation of the Culver City-County Territory Areas upon the majority vote of the voters therein voting on the proposition at the election, notwithstanding her allegations that her property in the West Hollywood area (Parcel 4 of the nine parcels comprising the annexing territory) would receive no benefits from being included within appellee Districts and that a majority of the voters in Parcel 4 voting on the proposition voted against the annexation. [Clk. Tr. p. 7, lines 1-23, 31-32; p. 8, line 1; p. 39, lines 10-19, 32; p. 40, lines 1-10.]

After the rulings of the trial court on January 10, 1955, the President and Secretary of the Board of Directors of appellee West Basin, in performance of their statutory duties, promptly certified the election results to the County Recorder of Los Angeles County and the Secretary of State of the State of California, who then issued his certificate evidencing the completion of the annexation on January 11, 1955. Thereupon said Secretary of West Basin and the Secretary of appellee Metropolitan caused to be filed with the County Assessor of Los Angeles County and with the State Board of Equalization the respective statements of boundary changes of appellee Districts, and from and after January 12, 1955, appellees West Basin and Metropolitan have been exercising jurisdiction over the annexed territory. (Affidavits of Sec-

retary of West Basin and of Secretary of Metropolitan in support of appellees' Motion to Dismiss Appeal in District Court of Appeal, App. "B" and App. "C" of appellee's Answer to Pet. for Hear. in State Supreme Court, pp. 2-20.)

Appellant appealed from the judgment of the Superior Court to the Supreme Court of California, her notice of appeal being filed March 11, 1955. [Clk. Tr. p. 46.] The appeal was transferred to the District Court of Appeal for the Second Appellate District. Division Two of that Court on September 22, 1955, by minute order granted appellees' motion to dismiss the appeal on the grounds that it was moot because the certification of the election results sought to be prevented by the writ of mandate had been made, and because the validity of the completed annexation could be attacked and the appellee Districts be ousted from their jurisdiction over the annexed territory only by proceedings in *quo warranto*. (Appellees' Motion to Dismiss Appeal and supporting Memorandum of Points and Authorities, filed in said District Court of Appeal and made part of the record on this appeal; appellant's Juris. State., App. B, p. 9.) Appellant's petition for hearing by the California Supreme Court after decision of the District Court of Appeal was denied November 16, 1955, by minute order. (Appellant's Juris. State., App. B, p. 9.) The notice of appeal to this Court from the order of the State Supreme Court was filed in the District Court of Appeal on February 14, 1956.

ARGUMENT.

I.

No Substantial Federal Question Is Presented by This Appeal.

The appeal from the orders of the California appellate courts determining that, by reason of the certification of the election results and completion of the annexation following dismissal by the Superior Court of appellant's suit, the relief sought by her no longer could be granted under State practice in her action, thus requiring dismissal of her moot appeal, presents no substantial federal question.

The right of appeal under State practice is not essential to due process, provided that due process has already been accorded in the tribunal of the first instance.

> *Ohio ex rel. Bryant v. Akron Metropolitan Park District* (Oct. Term, 1929), 281 U. S. 74, 74 L. ed. 710.

Decision of a State court that a claimed federal right has not been asserted in proper manner under State system of pleading and practice is binding upon United States Supreme Court where such decision of the State court is not made for the purpose of defeating the claim of federal right.

> *Nevada-California-Oregon Railway v. Burrus* (Oct. Term, 1916), 244 U. S. 103, 61 L. ed. 1019.

This Court will not consider moot appeals.

Richardson v. McChesney (Oct. Term, 1910), 218 U. S. 487, 54 L. ed. 1121;

Jones v. Montague (Oct. Term, 1903), 194 U. S. 147, 48 L. ed. 913;

Selden v. Montague (Oct. Term, 1903), 194 U. S. 153, 48 L. ed. 915;

Mills v. Green (Oct. Term, 1895), 159 U. S. 651, 40 L. ed. 293.

II.

The Orders of the California Appellate Courts Rest on an Adequate Non-Federal Basis.

Appellant has appealed from the orders of the California appellate courts which determined that upon certification by the California Secretary of State of the completion of the annexation, an action in *quo warranto* brought by the Attorney General of the State was the only proceeding available under State practice by which attack could be made upon the validity of the annexation and by which appellees could be ousted from their jurisdiction within the annexed territory. These orders rest upon an adequate non-federal basis.

Upon proper application by appellant to the Attorney General indicating the existence of a substantial question as to the validity of the annexation, it would have been an abuse of discretion for the Attorney General to refuse to file such action in *quo warranto*.

Cal. Code Civ. Proc., Sec. 803;

18 *Ops. Cal. Atty. Gen.*, 7 (July 6, 1951).

Appellant is in no position to complain that the action in *quo warranto* would not furnish an adequate remedy

to protect her rights under the Federal Constitution. She has never asserted that she made application to the Attorney General of the State to bring an action in *quo warranto* to establish the invalidity of the annexation and to oust appellee Districts from their jurisdiction within the annexed territory.

The Fourteenth Amendment to the Federal Constitution does not control the power of a State to determine by what process legal rights may be asserted or legal obligations enforced, provided the method of procedure adopted for these purposes gives reasonable notice and affords fair opportunity to be heard before the issues are decided.

Iowa Central R. Co. v. State of Iowa (Oct. Term, 1895), 160 U. S. 389, 40 L. ed. 467.

The State Legislature may classify litigation and provide different types of procedure for different classes.

Dohany v. Rogers (Oct. Term, 1929), 281 U. S. 362, 74 L. ed. 904;

Crane v. Hahlo (Oct. Term, 1921), 258 U. S. 142, 66 L. ed. 514.

Where State practice provides exclusive remedy of *quo warranto*, Federal Courts will not permit collateral attack in some other form of action upon validity of annexation to public and municipal corporations of the State.

Selser v. City of Stuart (5th C. C. A., 1943), 135 F. 2d 211, *certiorari* denied, 320 U. S. 769, 88 L. ed. 460;

Morin v. City of Stuart (5th C. C. A., 1940), 111 F. 2d 773 (quoted with approval in *Selser v. City of Stuart, supra*).

Appellees do not levy "assessments for special benefits" but are public and *quasi*-municipal corporations of the

State of California, empowered to levy "general taxes" upon all taxable real and personal property within their respective boundaries. The determination of the territory to be annexed thereto presents a political question to be decided in the manner provided by general statute. The absence of benefits to particular property cannot be urged by its owner to invalidate the inclusion in appellee Districts of such property by proceedings conducted in the manner prescribed by the applicable statutes, which may provide that the proposition for such annexation shall be determined by the over-all vote cast by the voters in the entire territory included in the annexation proceeding.

City of Pasadena v. Chamberlain (In Bank, 1928), 204 Cal. 653, 663-664, 269 Pac. 630, 634-635;

Henshaw v. Foster (In Bank, 1917), 176 Cal. 507, 512, 514, 169 Pac. 82, 84-85;

In re Orosi Public Utility District (In Bank, 1925), 196 Cal. 43, 51-52, 57, 59, 60-61, 235 Pac. 1004, 1008, 1010, 1011-1012;

Golden Gate Bridge and Highway District v. Felt (In Bank, 1931), 214 Cal. 308, 324-325, 5 P. 2d 585, 593;

Hunter v. Pittsburgh (Oct. Term, 1907), 207 U. S. 161, 174-175, 177-179, 52 L. ed. 151, 157, 158-159 (upholding the consolidation of the Cities of Pittsburgh and Allegheny under the Pennsylvania statute which "permitted the voters of the larger city to overpower the voters of the smaller city, and compel the union without their consent and against their protest."—207 U. S. 177, 52 L. ed. 159).

Appellant in her jurisdictional statement cites cases involving special assessment districts formed for the pur-

pose of conferring special benefits upon the properties to be assessed to defray the costs of the improvements. The principles applicable to the formation and enlargement of such districts do not apply to appellees. Detailed discussion of such cases would not be pertinent on this motion to dismiss the appeal.

III.

The Appeal Is Not Within the Jurisdiction of this Court.

Appellant's appeal in the State courts was dismissed on the grounds that it had become moot because under the State practice no relief could be granted in her action and because attack upon the validity of the completed annexation could be made only in an action in *quo warranto* filed by the Attorney General of the State.

Neither the order of the California Supreme Court refusing a hearing after decision by the District Court of Appeal nor the order of said District Court of Appeal dismissing appellant's appeal from the Superior Court's judgment, constituted a decision in favor of the validity of any California statute asserted by appellant to be repugnant to the Federal Constitution. Nor did the California appellate courts expressly pass on the federal question which appellant thus sought to have reviewed.

The Superior Court's judgment was *not* a "final judgment or decree rendered by the highest court of a State in which a decision could be had" respecting the constitutionality of the California statutes governing the annexation of the Culver City-County Territory Areas to appellee Districts. Appellant has recognized that she could not take this appeal from such judgment of the Superior Court under the statutory provisions asserted by her to

confer jurisdiction upon this Court. (Title 28, United States Code, Section 1257(2).) Her notice of appeal, directed to the order of the California Supreme Court, was filed in the District Court of Appeal.

This appeal, because it was not taken in conformity to statute, is not within the jurisdiction of this Court.

Conclusion.

For the reasons set forth above, it is respectfully submitted that this appeal should be dismissed.

Respectfully submitted,

RALPH B. HELM,
Attorney for Appellee West Basin Municipal Water District.

JAMES H. HOWARD,
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JOHN M. DAVENPORT,
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[redacted]

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IN THE

Supreme Court of the United States

October Term, 1955

No. 869

GERTRUDE P. MONTGOMERY,

Appellant,

vs.

WEST BASIN MUNICIPAL WATER DISTRICT and THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA,

Appellees.

On Appeal from the Supreme Court of the State of California.

BRIEF IN OPPOSITION TO MOTION TO DISMISS.

Preliminary Statement.

Appellant respectfully presents this brief in opposition to appellees' motion to dismiss the appeal. It will be pointed out under the appropriate heading how the recital contained in appellees' Statement of the Case varies in material respects from the record upon which the case was heard and determined in the State courts. For the rest, it will be shown that the legal propositions for which appellees contend are either erroneous or inapplicable.

1. This Court Has Jurisdiction of the Appeal.

Appellees make the formal objection that the appeal was not taken in conformity with statute. (Title 28, U. S. Code, Sec. 1257(2).) Actually, their contention seems to be that no appeal to this Court lies from any of the State court decisions adverse to appellant. It is asserted on behalf of appellees that the Superior Court judgment was not that of the highest State court and that the orders of the State appellate courts did not decide in favor of a State statute challenged as being repugnant to the Federal constitution.

The notice of appeal referred to the decisions of all three State courts. (*Cf.* the practice on certiorari of seeking a writ addressed to more than one court: Stern and Gressman, Supreme Court Practice (2d ed.), p. 189.) The filing of the notice with the District Court of Appeal has not the significance which appellees would attribute to it; the notice was filed with the court possessed of the record, pursuant to Rule 10(3).

It is clear that the Superior Court decided favorably to the State statutes attacked on Federal constitutional grounds. If in the circumstances that was the highest State court in which a decision could be had, the notice of appeal was timely filed within three months after the State Supreme Court denied a hearing. *American Ry. Express Co. v. Levee,* 263 U. S. 19, 20-21.

If, on the other hand, either of the State appellate courts was the highest State court in which a decision could be had, the failure of those courts expressly to pass on the constitutional question does not deprive this Court of jurisdiction. Appellees have asserted, with a confidence which appellant is unable to share, that the State

appellate court decisions without opinion were based on non-Federal grounds. But this Court has jurisdiction to determine whether such asserted non-Federal grounds are adequate to support the decisions below. *Nielson v. Lagow*, 12 How. 98, 109-110. That such asserted grounds are inadequate appears from our Jurisdictional Statement and further from what is said in this brief, *infra*.

2. The Cause Is Not Moot, nor Was It so Treated by Appellees or by the State Courts, for a Judgment Against Appellant on the Merits Was Permitted to Stand.

Appellees now contend that the cause is moot and that the decisions of the State appellate courts, although unaccompanied by any opinion, were based on that proposition.

We showed in our Jurisdictional Statement that the cause did not become moot by reason of action which appellees took *pendente lite* to perfect the district annexation which appellant's suit had challenged. Rightly considered, the cases cited by appellees do not support their contentions as to alleged mootness. Those were cases in which events had made it impossible to grant the only relief which was or could have been sought, as where a ministerial officer, not party to the record, had irrevocably performed the only act which the suit sought to prevent. The instant case, however, is concerned with the threatened imposition, over the next 30 years, of a special tax claimed to be invalid. Surely that controversy has not passed beyond the reach of judicial relief.

Appellees' conduct is inconsistent with their present contention as to mootness. On January 10 and 11, 1955, appellees performed the acts which they now claim ren-

dered the controversy moot. Yet they did not then bring that fact to the attention of the court in which the action was then pending. Instead, on January 12, 1955, they submitted a form of judgment on the merits and procured it to be signed. Appellees refrained from making any suggestion of mootness to the State courts until August, 1955, when they were able to assert, not only that the controversy was moot, but also that the statute of limitations had run against the institution of a proceeding in *quo warranto*, which they then (for the first time) contended was the exclusive remedy for the wrongs of which appellant complained.

From the foregoing, it appears that even after the happening of the events alleged to have rendered the action moot, appellees took action to secure an adjudication of the cause on its merits. Accordingly, their conduct should preclude them from arguing mootness, even if such contention otherwise had merit, which it does not.

The State appellate courts did not treat the cause as moot, for they left undisturbed the Superior Court judgment on the merits, instead of vacating it as they should have done had they believed the cause moot. *Cf. United States v. Munsingwear, Inc.*, 340 U. S. 36.

Accordingly, appellees' argument as to mootness does not constitute a non-Federal ground adequate to support the State court decisions. Even if mootness existed it would not furnish a reason to dismiss the appeal; rather, in such case this Court should vacate the judgment below. *Dyer v. City Council of Beloit*, 333 U. S. 825.

3. A Question of Federal Due Process, Not Merely of State Practice, Is Necessarily Involved in Appellees' Contention Respecting the Alleged Exclusiveness of Quo Warranto Procedure at the Discretion of a State Officer.

Appellees contend that the State appellate courts decided *sub silentio* in favor of appellees' contention that the annexation in question could be challenged only by a proceeding in *quo warranto*. Thus the argument on behalf of appellees would make it appear that all that was involved was a question of State practice, of no concern to this Court.

The plausibility of appellees' argument disappears upon analysis which has regard to the nature of the right claimed by appellant and the limitations on *quo warranto* procedure as it is known in California.

Appellant challenged State statutes and State action thereunder on Federal constitutional grounds. What was involved was appellant's individual property rights, not merely a political question in which appellant claimed no special interest apart from the public right. As at common law, in California *quo warranto* is a prerogative writ issued at the pleasure of the sovereign, whose discretion is not subject to control. And when such a proceeding is instituted it remains wholly under the control of public authority to the exclusion of the private person at whose instance the writ issued, and whose status as "relator" is much like that of a mere informer or complainant in a criminal case. (*Johnson v. Manhattan Ry. Co.*, 289 U. S. 479, 502; *Nebraska Territory v. Lockwood*, 3 Wall. 236, 238; *Wallace v. Anderson*, 5 Wheat. 291, 292; and see California cases cited in appellant's Jurisdictional Statement, p. 18.)

State legislation which would preclude resort to the courts for the purpose of seeking relief from alleged confiscation offends the Fourteenth Amendment, as does legislation which places undue restrictions on the right to seek judicial relief and which in effect denies a hearing to the aggrieved party. *Ex parte Young*, 209 U. S. 123. The hearing assured by the due process clause implies the right to present evidence and argument. *Morgan v. U. S.*, 304 U. S. 1, 17. Such a hearing is denied to one who, as in a California *quo warranto* proceeding, is deprived of the standing of a party and must rely on the discretion of a State officer to institute a proceeding and present evidence and argument. The result is that to restrict appellant to the alleged remedy of *quo warranto* would violate due process.

This view of the matter was evidently entertained by the Supreme Court of Texas in *Parks v. West*, 102 Tex. 11, 18, 111 S. W. 726, a case very similar to this one. There the court said:

> ". . . it is urged that the attack of plaintiffs is upon the corporate existence of the . . . school district in a collateral proceeding, and that the validity of such incorporation can be questioned only by the state in a direct proceeding. . . .
>
> "The rule is founded in public policy and convenience, merely, and is not to be so applied as to defeat the assertion of just legal rights by parties in the courts. . . .
>
> "But be that as it may, the attack of the plaintiffs is not merely upon the corporate existence of the district, but is directed against the power of the defendants to lay burdens on their property and subject them to the payment of taxes. Surely they have

the right to do that although the reason they assign for the lack of power may also go to the right of the district to exist under the Constitution. Certainly a property holder has the right to say to the court that he is protected by the Constitution from the imposition of a tax by persons to whom the Constitution, in effect, denies such power. If the rule relied on by defendants should preclude plaintiffs from making the contention now, when and in what way could they make it? . . . useful and convenient as is the doctrine invoked, we cannot give our assent to an application of it which would deny to the plaintiffs the protection sought of their property rights."

For the reasons stated, the alleged exclusiveness of the *quo warranto* remedy is not a non-Federal ground adequate to support the State court decisions here in question.

4. Appellees Should Not Be Heard Now to Dispute Appellant's Allegations, Admitted by Demurrer, Which Showed the Imposition of a Special Bond Tax on Appellant's Property Without Any Benefit, Where the Tax Purports to Be Laid According to Benefit.

As shown in our Jurisdictional Statement, appellant's initial pleading in the State court alleged that as part of the annexation scheme in question there would be imposed on West Hollywood property, including appellant's, a special bond tax of $23 million for construction of facilities of no possible benefit to West Hollywood property. Bonded indebtedness is supposed to be made the obligation of the property benefited thereby: Section 24, Municipal Water District Act, Jurisdictional Statement,

Appendix page 2. Accordingly, appellant's case invoked the doctrine of *Myles Salt Co. v. Iberia Drainage District*, 239 U. S. 478.

Appellees answered, taking issue with certain allegations of appellant's initial pleading, and also demurred. In California, as at common law, a demurrer admits the truth of the pleading against which it is directed, 2 Witkin, California Procedure, 1471. The issues made by appellant's petition and appellee's answer were never tried; instead, the State Superior Court sustained the demurrer without leave to amend. The result is that the State court held as matter of law that a pleading which invoked the Federal constitutional principle of *Myles Salt Co. v. Iberia Drainage District*, 239 U. S. 478, was so devoid of merit as not to permit evidence in support thereof to be taken.

In this Court, however, appellees have disputed the allegations of appellant's petition to the State court; they would have this Court accept their version of the facts on an issue which they persuaded the State courts not to try. Thus, appellees say that property within the annexed territory will not be subjected to the imposition of special taxes for the payment of $23 million bond indebtedness. (Motion to Dismiss, p. 11.) If that is so, then appellees should have been willing to establish the fact in the State courts, rather than to urge the State courts to err in holding legally insufficient a pleading which clearly called for relief under the Federal constitution.

The State courts acted upon the basis of appellant's initial pleading and appellees' demurrer thereto, without taking evidence. Appellant is entitled to have this Court consider the case on the same basis. The facts in dispute can be fully developed upon a trial after remand.

Conclusion.

This appeal is clearly within the jurisdiction of this Court, and was taken in conformity with statute. The cause is not moot. The non-Federal grounds asserted by appellees are inadequate to support the State court decisions. The Federal question presented is substantial. Accordingly, the motion to dismiss should be denied. If, however, the Court should entertain doubt concerning the substantial character of the Federal question, then the Court should postpone consideration of the question of jurisdiction to the hearing of the case on the merits, pursuant to Rule 16(4). If, contrary to appellant's primary contention, the Court should be of opinion that the cause is moot, then the judgment below should be vacated so that appellant may pursue such remedies as she may have, without hindrance by any contention as to *res judicata.*

Respectfully submitted,

RICHARD A. PERKINS,

A. ANDREW HAUK,

Attorneys for Appellant.

No. 869. MONTGOMERY *v.* WEST BASIN MUNICIPAL WATER DISTRICT ET AL. Appeal from the Supreme Court of California. *Per Curiam:* The motion to dismiss is granted and the appeal is dismissed for want of a substantial federal question. *A. Andrew Hauk* for appellant. *James H. Howard, Charles C. Cooper, Jr.* and *John M. Davenport* for the Metropolitan Water District of Southern California, appellee.

No. 885. CALTAGIRONE *v.* SUPERIOR COURT OF CALIFORNIA,